

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

NEXGEN LIFESCIENCES, LLC,

Plaintiff,

v.

Civil Action No. 2:22-CV-02901
Hon. Madeline Cox Arleo
Magistrate Hon. José R. Almonte

MSN LABORATORIES PRIVATE LIMITED,

Defendant,

JOINT PROPOSED DISCOVERY PLAN

1. Set forth the name of each attorney appearing, the firm name, address and telephone number and facsimile number of each, designating the party represented.

Representing Nexgen Life Sciences, LLC

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2. Set forth a brief description of the case, including the causes of action and defenses asserted.

Plaintiff's Description:

Nexgen Lifesciences, LLC ("Lifesciences") and MSN Laboratories Private Limited ("MSN") entered into a contract whereby Lifesciences would pay certain amounts requested by MSN to fund attempts to obtain FDA approval for various MSN-manufactured generic medications. Lifesciences would receive exclusive distribution rights in return, unless Lifesciences breached, which would then cause Lifesciences to have only a non-exclusive distribution right. Lifesciences contends that, after it paid approximately, \$800,000 to MSN for the FDA approval process, MSN stopped making requests for draws for the remaining payment schedule (less than \$100,000) and went dark on Lifesciences. Lifesciences later learned that MSN attempted to create a breach by not requesting the final draw from Lifesciences and then claim that the supposed breach allowed MSN to provide its subsidiary with exclusive distribution rights in direct contravention of the contract between MSN and Lifesciences. Lifesciences also contends that MSN was unjustly enriched by payments Lifesciences made to MSN.

Defendant's Description:

MSN denies Plaintiff's allegations and further denies that Plaintiffs are entitled to any judgment or relief requested in the Complaint. In its answer to the Complaint, MSN asserts that Nexgen and MSN entered into a certain Collaboration and Supply Agreement ("Agreement") whereby the

Parties agreed to pursue three products, i.e., Rosuvastatin Calcium, Capecitabine, and Moxifloxacin Hydrochloride. Also pursuant to the terms of the Agreement, Nexgen was to pay certain milestone payments and cost sharing payments upon the occurrence of certain dates and events. Thereafter, the Parties agreed to terminate the commercialization of Moxifloxacin Hydrochloride for commercial non-viability. Further, Nexgen did not pay the required cost sharing and milestone payments related to Capecitabine as required under the Agreement. And, with respect to Rosuvastatin Calcium, Nexgen paid only a portion of the agreed-upon amount. As such, MSN asserts Counterclaims for breach of contract and declaratory judgment. In addition to its Counterclaims, MSN also asserts Affirmative Defenses of failure to state a claim, laches, equitable estoppel, waiver and/or interference, termination, failure to mitigate damages, no breach of contract, unjust enrichment, failure of condition precedent, prior breaches, failure to perform and/or lack of consideration, statute of limitations, and no entitlement to attorneys' fees.

3. Have settlement discussions taken place? Yes x No

(a) What was plaintiff's last demand?

- (1) Monetary demand: none
- (2) Non-monetary demand:

(b) What was defendant's last offer?

- (1) Monetary offer: none
- (2) Non-monetary offer:

4. The parties [have x have not] met pursuant to Fed. R. Civ. P. 26(f):

5. The parties [have x have not] exchanged the information required by Fed. R. Civ. P. 26(a)(1). If not, state the reason therefor.

6. Explain any problems in connection with completing the disclosures required by Fed. R. Civ. P. 26(a)(1).

There are no problems.

7. The parties [have have not x] filed disclosures of third-party litigation funding. See Local Civil Rule 7.1.1.

No such funders are involved in this litigation at this time.

8. The parties [have have not x] conducted discovery other than the above disclosures. If so, describe.

No discovery has been conducted.

9. Proposed joint discovery plan:

(a) Discovery is needed on the following subjects:

Contract formation
Contract execution
Contract performance
Actions by the parties relating to the alleged breaches
Sales of the subject molecules and other damage-related issues

(b) Discovery [should _____ should not x] be conducted in phases or be limited to particular issues. Explain.

The issues in this case are intertwined and conducting the discovery in phases would only increase the expense to the parties and delay the resolution of the case.

(c) Proposed schedule:

1. Fed. R. Civ. P. 26 Disclosures 9/15/22
2. E-Discovery conference pursuant to L. Civ. R. 26.1(d). 9/22/22
3. Service of initial written discovery.
10/7/22
4. Maximum of Interrogatories by each party to each other party. 25
5. Maximum of Requests for Admission by each party. 40
6. Maximum of depositions to be taken by each party. 10
7. Motions to amend or to add parties to be filed by 02/21/23
8. Factual discovery to be completed by 6/16/23
9. Parties' opening expert reports on issues for which they bear the burden of proof due on 8/15/23
10. Parties' reply expert reports due on 9/15/23
11. Expert depositions to be completed by 10/20/23
12. Dispositive motions to be served within 30 days of completion of expert discovery.

(d) Set forth any special discovery mechanism or procedure requested.

None.

(e) A pretrial conference may take place on Court's Preference

(f) Trial date: (____ Jury Trial; x Non-Jury Trial) Court's Preference

10. Do you anticipate any special discovery needs (i.e., videotape/telephone depositions, problems with out-of-state witnesses or documents, etc)? Yes x No ____ . If so, please explain.

Some witnesses may reside in India.

11. Do you anticipate any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced?
Yes ____ No x .

If so, how will electronic discovery or data be disclosed or produced? Describe any agreements reached by the parties regarding same, including costs of discovery, production, related software, licensing agreements, etc.

12. Do you anticipate entry of a Discovery Confidentiality Order? See L.Civ.R. 5.3(b) and Appendix S.

Yes.

13. Do you anticipate any discovery problem(s) not listed above? Describe. Yes ____ No x .

14. State whether this case is appropriate for voluntary arbitration (pursuant to Local Civil Rule 201.1 or otherwise) or mediation (pursuant to Local Civil Rule 301.1 or otherwise). If not, explain why and state whether any such procedure may be appropriate at a later time (i.e., after exchange of pretrial disclosures, after completion of depositions, after disposition or dispositive motions, etc.).

The case is appropriate for mediation.

15. Is this case appropriate for bifurcation? Yes _ No x .

16. An interim status/settlement conference (with clients in attendance), should be held no later than July 2023.

17. We [do ____ do not x] consent to the trial being conducted by a Magistrate Judge.

18. Identify any other issues to address at the Rule 16 Scheduling Conference.

None.

/s/ L. Reid Skibell

Attorneys for Plaintiff/ September 20, 2022

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